

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
REGULATIONS IMPLEMENTING
THE FARMWORKER HOUSING ASSISTANCE TAX CREDIT PROGRAM

CALIFORNIA CODE OF REGULATIONS,
TITLE 4, Division 17, Chapter 2

Section 11000 Purpose and Scope

The California Health and Safety Code Chapter 3.7 of Part 1 of Division 31 commencing with Section 50199.50 and California Revenue and Taxation Code Sections 17053.14, 23608.2 and 23608.3 established the Farmworker Housing Assistance Program and designated the California Tax Credit Allocation Committee as the agency to administer the program and promulgate rules and regulations, policies and procedures governing the Committee's management of the program. These regulations establish procedures for the reservation, allocation and compliance monitoring of the Farmworker Housing Assistance Program. In the event that the California Legislature, or the California Franchise Tax Board adds or changes any statutory or regulatory requirements concerning the use or management of the program, participants shall comply with such requirements.

Authority: 50199.56 Health and Safety Code

Reference: 50199.51 Health and Safety Code

Section 11001 Definitions

- (a) Agricultural Worker or Farmworker. As defined in subdivision (b) of Section 1140.4 of the Labor Code.
- (b) Allocation. The action taken by the Committee in awarding credit to an applicant.
- (c) Cash flow or Cash flow after debt service. The gross income minus vacancy and collection loss, operating expenses, property taxes, replacement reserves and debt service.
- (d) Committee. The California Tax Credit Allocation Committee.
- (e) Compliance period. The period of 30 consecutive taxable or income years beginning with the taxable or income year in which the credit is allowable.
- (f) Critical occurrence. A declaration of a federal or state emergency by the Governor of the State of California; or, a declaration by the Committee subsequent to an event or series of events occurring within a county or local area in which a Farmworker Housing Assistance Program project is located which threatens the welfare or safety of a project or the tenants of the project.
- (g) Developer Fee. Amount of identified uses of project funds paid as compensation for developing a proposed project that includes all Credit consultant fees, broker fees, processing agent fees, developer overhead and profit, compensation for any construction

management oversight provided by the developer, the cost of any personal guarantees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.

- (h) **Economic Feasibility.** Determinations of the Committee based upon evidence submitted by the applicant that financial capacity exists to complete or ensure completion of a project and to sustain, operate and maintain, or ensure the operation and maintenance of the project for the compliance period; and, that the project operating budget is adequate to operate the project for the compliance period
- (i) **Eligible Costs.** Total finance costs, construction costs, excavation costs, installation costs and permit costs paid or incurred to construct or rehabilitate farmworker housing. Eligible costs include but are not limited to improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. **Non Eligible Costs** include land and those costs financed by grants and below market financing provided by federal or State government.
- (j) **Family housing projects.** A project where all units consist of 3 or more rooms for households as defined below.
- (k) **FTB.** California Franchise Tax Board.
- (l) **Household.** As defined in Section 7602 of Title 25 of the California Code of Regulations.
- (m) **Qualified accountant.** As defined in Section 17053.14(f)(7) of the Revenue and Taxation Code.
- (n) **Qualified farmworker housing.** Housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program as specified in Revenue and Taxation Code Section 17053.14(f)(5).
- (o) **Qualified year.** As defined in Section 23608.2 (a)(3) of the Revenue and Taxation Code.
- (p) **Reservation.** The preliminary award of Credit to a proposed project intended to be eligible for Credit.
- (q) **Total Project Costs.** Total finance costs, construction costs, excavation costs, installation costs, land costs and permit costs paid or incurred to construct or rehabilitate farmworker housing. Eligible costs include but are not limited to improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. **Non Eligible Costs** include any costs associated with the syndication of the Credit.

Authority: 50199.56, Health and Safety Code

Reference: 50199.50, 50199.55 (a) 50199.56 Health and Safety Code, 17053.14(a),(b),(f), 23608.2(f), 23608.3(f) Revenue and Taxation Code.

Section 11002 General Provisions

- (a) General. Each February the Committee shall provide the FTB with a listing of project owners reserved and or allocated credit during the preceding calendar year. The Committee, as the agency charged with enforcing the program regulations and statutes, shall report any violations of program regulations to the FTB.
- (b) Purpose. These regulations implement the Farmworker Housing Assistance Program which shall provide assistance for the housing of farmworkers and their families. Preference shall be given family projects. Housing types may consist of single-family residences, multi-family residences, manufactured housing, mobile homes or dormitory style dwellings. The program shall allow dormitory style housing to be restricted by sex. Farmworkers need not be employees of the property owner upon which the farmworker housing project is located.
- (c) Tax credit. The Committee shall allocate Credit calculated on the project's Eligible Costs. Applicants for the Farmworker Housing Assistance Program may be project owners or a bank or financial institution..
 - (1) Credit shall not be allowed unless:
 - (A) The project is constructed or rehabilitated under covenants, conditions and restrictions imposed by this program and pursuant to the Farmworker Housing Assistance Program;
 - (B) The owner operates or ensures the operation of the farmworker housing pursuant to the requirements of the program for the term of the compliance period;
 - (C) The owner obtains a cost audit and certification of Eligible Costs from a qualified accountant;
 - (D) The owner enters into a regulatory agreement with TCAC which will be recorded against the land;
 - (E) The taxpayer obtains a TCAC 3521B (7/97) from the Committee indicating the amount of credit for which the project qualifies.
 - (2) For owners of farmworker housing, the credit allocated shall be an amount equal to the lesser of fifty percent (50%) of the Eligible Costs as defined in Section 11001 or the amount allocated to the taxpayer for the income year.
 - (A) No credit can be claimed until the qualified year as defined in Section 11001.
 - (B) Should the credit exceed the taxpayer's tax liability, the excess may be carried over to reduce the tax liability in the following years until the credit is exhausted.

- (C) No costs paid or incurred prior to January 1, 1997 are allowable.
- (D) Any costs paid or incurred prior to application are not allowable.
- (3) For banks and financial institutions, the credit allocated shall be an amount equal to fifty percent (50%) of the difference between the amount of interest income which could have been collected had the loan rate been one point above prime, or any other index used by the lender, and the lesser amount of interest income actually due for the term of the loan by the bank or financial corporation. Credit will be calculated only on those portion(s) of loans funding Eligible Costs.
- (d) Reservation. The Committee shall allocate Credit annually through one or more funding cycles dependent upon the availability of credit after the award of credit each cycle. The filing deadlines for the funding cycles shall be 5:00 p.m. of the last business day of March, June, September and October. Applications not received by the filing deadline for a funding cycle will not be considered until the following cycle.
- (e) Waiting list. Waiting list Credit. Credit returned during any calendar year, and not made available in a reservation cycle, shall be made available to the highest ranking applications on Committee waiting lists.
- (f) Subsequent year's ceiling. The Committee in its discretion may make reservations of Credit against a subsequent year's federal and state credit ceilings.
- (g) Credit amounts available. The amount of Credit shall be established according to the following provisions:
 - (1) Amount of Credit. The amount available shall be equal to the sum of :
 - (A) \$500,000.00 plus the unused Credit balance from the preceding calendar year as of the date of the application deadline;
 - (B) Returned Credit. Credit returned and not allocated during any calendar year shall be made available for funding applications in the subsequent year.
- (h) Credit and ownership transfers. Banks or financial institutions shall not transfer or assign loans for which credit was awarded nor shall an owner of a project receiving credit transfer or assign the project without prior written approval of the Committee.
 - (1) Any proposed transaction shall be evidenced by a written agreement between the parties and shall include agreements entered into by the entity and the Committee.
 - (2) The entity proposing to acquire the ownership of a project shall be subject to a "qualifications review" by the Committee to determine if sufficient project development, financial capability and management expertise exists for owning or operating or ensuring the operation and maintenance of a Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed

information describing the financial capacity of said persons, shall be provided to the Committee upon request.

- (3) Banks or financial institutions which are recipients of Credit shall notify TCAC of any sale or assignment of a loan generating said credit. The notification shall indicate whether the bank or financial institution originating the loan will retain the servicing of the loan. The notification shall include the name, address, and contact person of the bank or financial institution purchasing the loan.
 - (A) The original lender may continue to claim credit if the servicing responsibilities are retained upon sale or transfer of the loan.
- (i) Separate Application. A separate application is required for each project in an application cycle.
- (j) Application forms. Applicants shall submit the application form FHAP-1 1998 approved by the Committee and incorporated by reference in full.
 - (1) A bank or financial institution requesting Credit for a below market interest rate loan made to a qualified project shall complete those portions of the application indicated and provide supplemental information as requested by the Committee.
- (k) Late applications. Applications received after the application filing deadline shall not be accepted.
- (l) Incomplete application. Applications not meeting all program and threshold requirements shall be considered incomplete and shall be disqualified from the cycle in which the application was submitted. Incomplete applications shall be retained by the Committee and the applicant shall be notified by the Committee of the disqualification.
- (m) Complete application. An application shall be deemed complete when the Committee determines that the application meets all program and threshold requirements. The applicant is responsible for providing evidentiary material that demonstrates, to the Committee's satisfaction, conformance with all program and threshold requirements.
- (n) Application changes. An application or any portion of an application may not be changed following the application filing deadline.
- (o) Substantially complete application. Notwithstanding the previous paragraphs, applicants submitting substantially complete applications with missing documents shall be given five (5) business days from the date of receipt of Committee notification to submit the requested documents to complete the application. If the required documents are not submitted within the time provided, the application shall be considered incomplete. The applicant shall demonstrate and confirm that evidentiary documents missing from the application were executed on, or prior to, the application filing deadline.
- (p) Disqualifying event. Should the committee determine that the applicant was awarded credit based on fraud or misrepresentation, or if the taxpayer fails to comply with the

requirements of the Employee Housing Act, if applicable, the Farmworker Housing Assistance Program, or any other requirement imposed under this section the Committee will take one or more of the following actions:

- (1) Declare an application invalid and the applicant shall forfeit all fees paid; or, if a Credit has been reserved or allocated, recapture or rescind the Credit;
 - (2) Notify the FTB of the disqualifying event and retain all fees paid to the Committee.
 - (3) In accordance with Sections 17053.14 (k), 23608.2 (k), 23608.3 (g) of the Revenue and Taxation Code, the applicant shall be subject to the fines and penalties imposed by these sections.
- (q) **Noncompliance.** The applicant has an affirmative duty to provide true and correct information to the Committee at all times. Upon being informed, or finding, that the project, or taxpayer, or any person acting on behalf of a taxpayer or on behalf of a project, has failed to comply with the Farmworker Housing Assistance Program, or any other requirement imposed by the Committee in these regulations, the Committee may, based upon the findings, declare that a “disqualifying event” has occurred and shall notify the FTB.
- (r) **Damage or Destruction.** In the event that the farmworker housing project is damaged or destroyed by a casualty not caused by the owner, the compliance period has not expired and the owner commences reasonable action to repair or replace the farmworker housing, the taxpayer may continue to claim the credit as if no damage or destruction had taken place.
- (1) The taxpayer shall notify the Committee of such an event within fifteen (15) calendar days subsequent to the occurrence.
 - (2) The taxpayer shall provide documentation demonstrating the commencement of reasonable action to repair or replace the farmworker housing.
 - (3) Based upon the evidence provided, the Committee shall determine if the taxpayer remains in compliance with the program regulations. If the Committee determines that the taxpayer has not remained in compliance, the Committee may determine that a “disqualifying event” has occurred and take such actions as described in Sections 17053.14 (k), 23608.2 (k) and 23608.3 (g) of the Revenue and Taxation Code.
- (s) **Project no longer feasible or no further need.** If the farmworker housing project is determined by the Committee to be no longer economically feasible or that there is no further need for the housing, the Committee may invoke Section 50199.54 of the Health and Safety Code and recapture the Credit previously allocated.
- (t) **Standard application documents.**

- (1) Applicant Certification Statement. A signed, notarized statement acknowledging and certifying, under penalty of perjury, that all information provided the Committee is true and correct and that the applicant affirms the duty to notify the Committee of any changes causing information to become false or misleading. The applicant statement shall certify that the applicant:
 - (A) is familiar with and will comply with the Credit program, statutes and regulations;
 - (B) holds the Committee and its employees harmless from program-related matters;
 - (C) acknowledges the potential for program modifications resulting from statutory or regulatory actions;
 - (D) acknowledges that Credit amounts reserved or allocated may be reduced should the terms and amounts of project sources and uses of funds be modified;
 - (E) agrees to comply with applicable laws outlawing discrimination;
 - (F) acknowledges that the Committee has recommended the applicant seek tax advice;
 - (G) acknowledges that the application will be evaluated according to program regulations, and that Credit is not an entitlement;
 - (H) acknowledges that continued compliance with program requirements is the responsibility of the applicant or a Committee approved transferee and that failure to comply with program requirements at any time may result in the Committee's declaration of a disqualifying event;
 - (I) acknowledges that information submitted to the Committee is subject to the Public Records Act;
 - (J) agrees to enter into a regulatory agreement with the Committee if Credit is allocated;
 - (K) acknowledges that upon the declaration of a natural disaster or critical occurrence, at any time during the compliance period, and at the discretion of the owner, the housing may be utilized for households needing shelter for up to 60 days if there are no farmworkers who have submitted an application to reside, or to continue to reside, in the housing.
- (2) The Application form. All applicants shall provide the following:
 - (A) General Applicant Information

- (1) Business name and status, including contact person, address, FAX and phone numbers and taxpayer identification number.
 - (2) Applicant's present and future role in ownership during the compliance period.
 - (3) Credit amount requested.
- (B) Proposed Project Information
- (1) Subject Property Information
 - (a) A preliminary title report of the subject property.
 - (b) Site and surrounding area description. A narrative description of the proposed use of the subject property, all adjacent property land uses, and any environmental or toxic concerns. Labeled photographs or color copies of the subject property and all adjacent properties shall be provided.
 - (c) Unique site features. A description of any unique features of the subject property which could result in increased project costs, toxic or environmental mitigation.
 - (d) Construction and design description. A detailed description of the proposed construction and design.
 - (e) Architectural drawings. If applicable, preliminary drawings of the proposed project including a site plan, building elevations, and unit floor plans which include unit and total square footage.
 - (f) If rehabilitation, a current (dated not more than 6 months prior to the application deadline) appraisal and a copy of the purchase contract.
 - (g) If rehabilitation, a tenant relocation plan, if applicable.
 - (h) Placed-in-service schedule. An estimated time schedule for the placed-in-service date(s) for each building and the total project.
 - (2) Land Use Approvals
 - (a) Evidence that all local approvals necessary to construct or rehabilitate the project have been obtained
- C) Financing plan. A detailed description that includes construction loan, permanent loan, bridge loan sources, and other fund sources, rental income, operating subsidies and reserves. The commitment status of all sources shall be provided along with supporting documentation from the lenders. All non-traditional financing arrangements shall be fully explained and accompanied with supporting documentation. Additionally, the following information is required:
- (1) Lender's names, addresses, FAX and phone numbers, and contact person.

- (2) Loan amount (rate, term, payments and anticipated usage) and commitment status.
- (3) Sources and Uses of Funds. Itemize by line item the use of funds.
- (4) Cash flow projection. A cash flow projection for the entire 30 year compliance period in which income projections increase at 2.5% per year, expense projections increase at 3.5% per year and property taxes increase at 1.0% per year.
- (D) Threshold Compliance Summary. Completion of the relevant checklist itemizing the documentation provided by the applicant in the application.
- (E) Identities of interest. Identification of any persons or entities (including affiliated entities) that plan to provide development, operational services, or financial support to the proposed project.
- (F) Organizational documents. All existing or proposed organizational documents of the applicant, including a detailed description of the ownership role of the applicant throughout the compliance period.
- (G) Use of Credit. A detailed explanation of how the Credit will be used by the applicant.
- (H) Cost Certification. For new construction or rehabilitation, the applicant shall provide, from a qualified accountant, a construction cost audit and a certification of Eligible Costs.
- (I) Terms of syndication. If the Credit is to be syndicated, the applicant shall meet the following requirements:
 - (1) A written estimate from the syndicator of the amount of equity dollars expected to be raised based upon the amount of Credit requested including pay-in schedules, syndication costs, all syndicator and consulting fees and an estimated tax credit factor shall be included in the application.
 - (2) No syndication costs shall be included as part of the Total Project Cost.

Authority: 50199.56 Health and Safety Code

Reference: 50199.52(a)(2), 50199.52(c), 50199.53(c), 50199.54(a), (b), ,50199.55(a), Health and Safety Code; 17053.14(a),(b),(d),(e), (f), (k), (l), 23608.2(b), (e), (f), (k), (l), 23608.3(b), (c), (d), (e), (f), (g) Revenue and Taxation Code

Section 11003 Application Selection Criteria

- (a) General. All applicants requesting Farmworker Housing Assistance Program Credit shall be eligible to apply under this Section for a reservation and allocation of Credit.
 - (1) Application review period. The Committee may require up to forty-five (45) days to review an application and an additional fifteen (15) days from the closing date of the application filing period to consider the application for a reservation of Credit.
 - (2) Application evaluation. Applications shall be evaluated to determine if complete, by meeting all threshold requirements; if economically feasible, by demonstrating the financial capacity to complete the project; and, the adequate financial capacity, resources and sufficient expertise to successfully develop, own and maintain the proposed project for the term of the compliance period.
 - (3) The applicant shall apply to the Committee for certification of Credit prior to incurring project costs.
- (b) Selection Criteria. Applications shall be evaluated and scored based upon cost efficiency as described below. Applications shall compete with other applications and shall be funded based upon the availability of Credit, and the cost efficiency score. Family housing projects as defined in Section 11001 will be given first priority in the allocation of Credit with secondary preference given to all other projects. Applications receiving a Credit reservation will be those with the lowest cost per square foot as described below. The criteria are:
 - (1) Primary Criteria - Cost Efficiency. The score consists of the following factors: Total Estimated Project Cost and Total Residential Square Footage. Score shall be determined by dividing the Total Project Cost by the Total Residential Square Footage to obtain the Cost per square foot. The resulting calculation shall be carried out to the third decimal point (i.e., \$89.756 per square foot).
 - (2) Tie-breakers. In the event that two or more applications receive the same score under the Primary Criteria, tie-breaker criteria shall be applied to establish the order of selection priority. The following tie-breakers shall be employed:
 - (A) First Tiebreaker - Financial Readiness. Points are based upon total project costs compared to the total financing formally committed at the time of application. Financing for this purpose includes loans, grants, investor and owner equity. Score shall be determined by dividing the Total Committed Financing by the Total Project Costs. The resulting calculation shall be carried out to the fourth decimal point (i.e., .4899). Projects shall be ranked with the highest percentage of Total Committed Financing first and so forth in that order.
 - (B) Second Tiebreaker - Equity Contribution. Points are based upon equity contribution related to the Credit. Score shall be determined by dividing the equity contribution related to the Credit by the amount of the Credit. The resulting calculation shall be carried out to the fourth decimal point (i.e.,

.7255). Projects shall be ranked with the highest percentage of Equity Contribution first and so forth in that order.

- (c) Thresholds. The following thresholds shall be met to the Committee's satisfaction by presentation of conclusive, documented evidence:
- (1) Site control. Applicants shall provide evidence that the subject property is, and will remain, within the control of the applicant from the time of application submission.
 - (2) Local approvals. Applicants shall provide evidence that at the time of application filing all land use and zoning approvals necessary to develop the proposed project have been obtained. The Committee may require in support of the evidence, a Committee provided form letter from an appropriate local government planning official of the applicable local jurisdiction certifying that all approvals are in place.
 - (3) Economic Feasibility. Applicants shall demonstrate, on a Committee approved format, a financing plan demonstrating the proposed project's economic feasibility as a qualified farmworker housing project. The information provided shall demonstrate that the proposed financing, including tax Credit, is sufficient to complete the project, adequate to operate the project for the term of the compliance period and the proposed ownership has the financial capacity to ensure the completion and operation of the project for the term of the compliance period. The feasibility analysis shall also utilize the underwriting criteria specified in Section 11004.
 - (A) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for a minimum fifty percent (50%) of the construction financing or fifty percent (50%) of the permanent financing for the proposed project's estimated total construction or total permanent financing requirements. The commitments shall be in writing and from a lender other than a mortgage broker, the applicant, or an identity of interest of the applicant. Permanent financing must have a term of at least 15 years.. If a variable or adjustable interest rate permanent loan is proposed, the applicant shall demonstrate feasibility at the maximum prescribed interest ceiling rate for the same period.
 - (B) Deferred-payment financing, grants and subsidies. Applicants shall provide evidence that all deferred-payment financing, grants and subsidies are "committed" at the time of application.
 - (1) Evidence provided shall signify the form of the commitment, the loan, grant or subsidy amount, the length of the commitment, and express authorization from an official expressly authorized to act on the commitment of funds.
 - (2) If applicable, substantiating evidence of the value of local fee waivers or land write downs may be required.

(C) Bank or Financial institutions requesting credit shall provide the following:

- (1) Request for an allocation of Credit.
- (2) An enforceable financing commitment of funds for the subject project detailing the terms and conditions of the loan commitment.
 - (a) Any financing commitment with a term of less than 15 years from the application filing deadline or loans funded prior to January 1, 1997 are excluded and ineligible.
 - (b) Applications shall be made prior to funding of the loan.
- (3) The stated market rate of interest for loans being offered to similar projects as of the closing date of the application filing period.
- (4) The stated rate of interest charged the subject project including the estimated amount, term and usage.
- (5) The amount of credit requested.
 - (a) The credit requested shall be based upon the interest earned on that portion of the principal amount of the loan which was used to fund Eligible Costs that were actually paid or incurred.
 - (b) The credit shall apply only to interest income earned in accordance with (a) above and shall not include any loan fees or charges by the bank or financial institution.
- (6) Amortization schedules showing the projected interest earned on the Eligible Costs at both the market rate and the below market rate shown in the commitment.

(D) Credit can only be applied for during an application cycle. If the bank or financial institution is not requesting Credit for the loan being provided to a proposed project, the applicant shall provide a waiver from all lenders at the time of application.

- (1) All lenders listed in the application, if not requesting Credit, shall execute and acknowledge that no Credit is being requested and that Credit will not be requested subsequent to any qualified expenditure made by the owner of the proposed project.

(4) Sponsor characteristics. Applicants shall provide evidence that project participants possess sufficient expertise and financial capacity to develop, own, operate and sustain the proposed project for the compliance period. The Committee shall determine if any of the evidence provided shall disqualify any or all of the participants or the applicant. The following minimum documentation is required:

- (A) Current year-to-date financial statement(s) and the prior three fiscal/ calendar year financial statements and IRS tax returns for the general partner(s), principal owner(s), and developer(s);
- (5) Minimum construction standards. Applicants shall provide a statement certifying their intent to meet all building and compliance requirements as more fully described in Health and Safety Code Section 18900, (for single or multi-family housing), the Health and Safety Code 19960 (for factory-built housing), Health and Safety Code 18000 (for mobile homes), or Health and Safety Code 17000, (for employee housing), as applicable. Additionally, the statement of certification shall itemize the minimum specifications of those codes to be incorporated into the project design.
 - (A) If local building codes are more restrictive than those regulations shall prevail.
 - (B) The applicant shall provide a certification from the appropriate local agency, from a certified architect, or from the appropriate state agency that the proposed housing meets the minimum standards as specified in the appropriate codes.

Authority: 50199.56, Health and Safety Code

Reference: 50199.52 , 50199.53, 50199.55,, Health and Safety Code; 17053.14(e), (f), (h), (i) 23608.2 (b), (e), (f), (h), 23608.3 (b), (e), (f), (h) Revenue and Taxation Code.

Section 11004 Financial Feasibility and Determination of Credit Amounts

- (a) General. The proposed project shall demonstrate that it is economically feasible as a qualified farmworker housing project and the applicant shall demonstrate the financial capacity to sustain the operation and maintenance of the proposed project or ensure the development, operation and maintenance from development through the term of the compliance period. Approved sources of funds shall be sufficient to cover approved uses of funds during the construction or rehabilitation and the project shall exhibit positive cash flow after debt service for a 30-year minimum term.
 - (1) If the Committee determines that the proposed sources of funds are insufficient to complete and sustain the project, an application shall be deemed as not meeting threshold requirements and shall be considered incomplete.
 - (2) At reservation and upon project completion, the Committee shall conduct economic feasibility determinations which may result in a reduction of the amount of Credit for which the proposed project is eligible or may rescind a Credit.
 - (3) If the maximum amount of Credit achievable is insufficient for economic feasibility, the Committee may deny or rescind a reservation or allocation of Credit.

- (b) Limitation on determination. A Committee determination of economic feasibility in no way warrants to any applicant, investor, lender or others that the proposed project is, in fact, feasible.
- (c) Reasonable cost determination. The Credit amount allocated to a project shall not exceed the amount necessary to construct or rehabilitate farmworker housing and provide for general improvement costs necessary and directly related to the project including compliance with laws governing access for persons with handicaps, building and permit fees, and costs relating to reducing utility expenses. The following standards shall apply:
 - (1) Builder overhead, profit and general requirements. An overall cost limitation of fourteen percent (14%) shall apply to builder overhead, profit and general requirements.
 - (2) Development Fees. Development Fees shall not exceed seven percent (7%) of the Eligible Costs prior to the inclusion of the developer fee. When the developer fee is established at application, the fee cannot be increased. Should the Eligible Costs decrease however, the Developer fee will be reduced commensurably.
 - (3) Syndication expenses. If applicable, syndication expenses, excluding bridge loan costs, shall not exceed twenty percent (20%) of the gross syndication proceeds if the sale of Credit is through a public offering or private Regulation D offering and shall not exceed ten percent (10%) of the gross syndication proceeds if the sale is through a private offering.
 - (4) Reasonable Costs. Development and operational costs shall be reasonable and may be adjusted by the Committee at any time prior to issuance of tax forms.
 - (5) Reserve Accounts. All unexpended funds in project reserve accounts shall remain with the project and shall be used for the benefit of the farmworker project or residents except for amounts designated for deferred developer fees which may be released when available.
 - (6) Applicant resources. The applicant or owner shall demonstrate, to the Committee's satisfaction, that sufficient financial resources are available and committed solely to ensure project completion and operation of the project for the term of the compliance period.
 - (A) An audited certification from a qualified accountant shall be provided at the time of application demonstrating that the applicant has sufficient unencumbered funds to successfully complete the project and sustain the annual operating expenses of the project.
- (d) Determination of Eligible Costs. The applicant shall provide the Committee with the amount of expenditures deemed qualified for Credit. The Eligible Costs shall be submitted to the Committee, on a Committee provided form. A qualified accountant shall provide a cost certification as to the Eligible Costs which the Committee shall verify. However, the

Committee retains the right to disallow any expenditure it determines ineligible or inappropriate.

- (e) Determination of Credit amount. The Committee shall determine the maximum allowable Credit which shall not exceed the lesser of the amount necessary for economic feasibility or fifty percent of the Eligible Costs. The Committee retains the right to disallow any expenditure it determines ineligible or inappropriate.
- (f) Determination of economic feasibility. Based upon the evidence submitted by the applicant, the Committee shall determine if the applicant has sufficient expertise and financial capacity to complete or ensure the completion of the proposed project and the ability to sustain, operate and maintain or ensure the operation and maintenance of the proposed project for the term of the compliance period; and, that the proposed project operating budget demonstrates the adequacy to operate the project for the term of the compliance period.
- (g) Underwriting. The following criteria shall be employed by the Committee to assist in determining economic feasibility:

- (1) Minimum operating expenses per unit per year shall be the greater of the amounts from the initial operating expense budget proposed by the applicant or the following operating expense minimums.

Project Size	SRO/Dorm		Family
5 or less beds	\$3,000	5 or less Units	\$2,100
5 to 10 beds	\$3,000	5 to 10 Units	\$2,000
More than 10 beds	\$2,900	More than 10 Units	\$1,900

- (2) For family housing projects, replacement reserve minimums shall be the higher of two hundred dollars (\$200) per unit per year, or an annual amount of six-tenths percent (.06%) of hard construction cost for new construction applications; or, six-tenths percent (.06%) of the Eligible Costs, excluding developer fees, for rehabilitation projects.
- (3) Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (not including taxes and replacement reserves).
- (4) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:
 - (A) the verified tax rate is higher or lower; or,
 - (B) the proposed sponsorship of the applicant includes an identified 501 (c)(3) corporate general partner with, or pursuing, a property tax exemption.
- (5) Vacancy and collection loss assumptions shall be five percent (5%) of the gross potential income of the farmworker housing project.

- (6) Loan terms shall include interest rate, term, and debt service coverage.
- (7) Variable interest rate permanent loans shall be considered at the ceiling interest rate.

Authority: 50199.51, 50199.56 Health and Safety Code

Reference: 50199.52, 50199.55 Health and Safety Code; 17053.14(b),(d),(e)(f),(h),
23608.2((b)(d), (e), (f), (h), 23608.3(d), (e) (f), Revenue and Taxation Code

Section 11005 Conditions on Credit Reservations

- (a) General. All reservations of Credit shall be conditioned at a minimum of, but not limited to, the following:
 - (1) Timely project completion;
 - (2) Receipt of amounts of Credit no greater than necessary for economic feasibility and viability as a qualified farmworker housing project throughout the compliance period;
 - (3) Continued use as a farmworker housing project for a period of 30 years.
 - (4) Executed and recorded Regulatory Agreement.
- (b) Reservation. Reservation of Credit shall be subject to conditions as described in this subsection and Sections 11004, 11006 and 11007.
 - (1) Reservation of Credit shall be conditioned upon the Committee's receipt of an executed reservation letter bearing the applicant's signature accepting the reservation within twenty (20) calendar days of the Committee's notice to the applicant.
 - (2) Should the 20-day period for returning the executed reservation letter continue past December 31 of any year, an applicant may be required to execute and return the reservation letter in less than twenty (20) days in order for the reservation to be effective.
 - (3) Failure to comply with any shortened period shall invalidate the reservation offer and permit the Committee to offer a reservation to the next eligible project.
- (c) Allocation. To receive the form evidencing an allocation of Credit the applicant must provide the following documentation upon project completion:
 - (1) The applicant shall submit documentation required by the Reservation Letter, a Farmworker Housing Assistance Program Regulatory Agreement and remit by cashier's check the compliance monitoring fee when requesting the Allocation.

- (2) The Committee shall review the documentation to determine if all conditions have been satisfied.
 - (A) Substantive changes to the approved original application, in particular, changes to the financing plan, proposed lenders or costs, shall be explained in detail and may require the Committee to request and review additional information; may cause the project to be completely reconsidered by the Committee; may cause a reduction in the Eligible Costs; or, may cause a rescission of the Credit reservation. In no case, however, will the Eligible Costs be increased over the amount established at the Reservation.
- (3) A current title report showing title vested in the entity which received the reservation of Credit, or the assignee which has been approved by the Committee.
- (4) Executed organizational documents, if applicable, between the applicant and investor(s);
- (5) Certificates of Occupancy for each building in the project (or a Notice of Completion for rehabilitation projects). With new construction Credit, a Certificate of Occupancy showing the placed-in-service date is required and for rehabilitation Credit, a Notice of Completion is required showing the placed-in-service date; and, a certified statement from the owner and contractor that all rehabilitation is complete;
- (6) A cost certification, on a Committee provided form, prepared by a qualified accountant.
- (7) Placed-in-service dates, shown separately for each building, on a Committee provided form. If the placed-in-service date(s) denoted are different from the date on the Certificate of Occupancy or Notice of Completion, a detailed explanation is required;
- (8) Photographs of the completed building(s) both interior and exterior;
- (9) If applicable, a certification from the syndicator of equity raised and syndication costs on a Committee provided format; or, if no syndication, a certification from a qualified accountant as to the amount of Credit available and the equity provided by the owner.
- (10) A project ownership profile on a Committee provided form;
- (11) A copy of any cost certification submitted to and approved by any other lender.
- (12) A narrative description of the following:
 - (A) Identification of the prospective qualified farmworkers and families;
 - (B) The number of units or sleeping areas;

- (C) The rent levels adjusted for family size;
 - (D) All other charges which will be charged to the farmworker;
 - (E) How the project is affordable for farmworkers and, if applicable, their families;
 - (F) Maintenance for the project; and,
 - (G) If applicable, a copy of the current operating permit issued pursuant to the Employee Housing Act;
 - (H) An executed regulatory agreement.
- (13) If all conditions have been satisfied, tax form TCAC 3521B (7/97) shall be issued.

Authority: 50199.56 Health and Safety Code

Reference: 50199.55 Health and Safety Code; 17053.14 (c), (e),(h), 23608.2 (c), (d), (e), (h), 23608.3 (c), (d), (e), (f), (e) Revenue and Taxation Code.

Section 11006 Appeals

- (a) Availability. An applicant may appeal a Committee staff determination of the application score or a determination of the Credit amount. No applicant may appeal the Committee staff evaluation of another applicant's application.
- (b) Timing. The appeal shall be in writing and received by no later than seven (7) calendar days following the transmittal date of the Committee staff report. The appeal shall identify, specifically, the applicant's grounds for the appeal.
- (c) Review. The review shall be based on the documentation submitted by the applicant when the application was filed. The Committee staff shall prepare a brief statement of findings as a result of the review. The statement will either uphold the original Committee staff report or will explain the modification(s) recommended. The statement will be made available to the applicant prior to the Committee meeting.

Authority: 50199.56 Health and Safety Code

Reference: 50199.55(a) Health and Safety Code; 17053.14 (c), (e),(i);23608.2(c), (e),(i); 23608.3 (c), (e).

Section 11007 Fees

- (a) Application fee. Every applicant shall be required to pay an application filing fee of \$1,000.00. The fee shall be by cashier's check made payable to the Committee and shall be submitted with the application. The fee is non refundable.

- (b) Compliance monitoring fee. The Committee shall charge a non-refundable fee of \$300 per unit; or, for dormitory style housing up to one-bedroom units, a \$50 per bed fee to cover the costs of compliance monitoring throughout the extended use period. Payment of the fee shall be made prior to the issuance of Credit.
 - (1) Assessment of a lesser fee and any alternative timing for the payment of the fee may be approved by the Committee. Financial hardship as a basis for reduction or waiver of fees is not allowable.
 - (2) Nothing in this subsection shall preclude the Committee from charging an additional fee to cover the costs of any compliance monitoring required; but, an additional fee shall not be required prior to the end of the first 10 years of the compliance period.

Authority: 50199.56 Health and Safety Code

Reference: 50199.55(a) Health and Safety Code; 23608.2 (i) Revenue and Taxation Code

Section 11008 Compliance

- (a) Regulatory Agreement. All recipients of Credit under this program shall execute a Regulatory Agreement as a condition precedent to the Committee's making an allocation of Credit. Banks and financial institutions are excluded from this requirement. The Regulatory Agreement shall include, but not be limited to, all of the following provisions:
 - (1) Establishment of the location and number of units or sleeping areas and their rents;
 - (2) Requirement of an annual report, including occupancy, income and maintenance information and, if applicable, a copy of the current operating permit issued pursuant to the Employee Housing Act;
 - (3) Requirements allowing and governing state approval of the assignment, transfer, and assumption of the housing to ensure that the requirements of the program are binding on successors;
 - (4) Agreement ensuring a term of use as a farmworker housing project at least equal to the compliance period;
 - (5) Requirement that the Regulatory Agreement be recorded in the official records of the county in which the qualified farmworker housing project is located;
 - (6) Enforcement of the Regulatory Agreement is by the Committee, by the city or county in which the farmworker housing is located and by the tenants as third-party beneficiaries;
 - (7) Method by which the affordable rents will be established and maintained;
- (b) Responsibility of owner. All compliance requirements are the responsibility of the project owner.

- (1) Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the FTB.
 - (2) If reasonable attempts by the Committee to obtain the information are unsuccessful the applicant will be notified of the rescission of Credit.
- (c) Compliance monitoring procedure. Compliance is the sole responsibility of the owner of the building(s) for which the Credit is allowable. The Committee's obligation is to monitor projects for compliance of the program requirements. The Committee assumes no liability for any owner's noncompliance nor does it relieve the owner of responsibility to comply with the terms and conditions of this program. The Committee's compliance monitoring requirements are as follows:
- (1) Annual Owner Report. Owners must submit an annual report providing information regarding occupancy, income, maintenance information, and any other information the Committee deems necessary to properly monitor a project.
 - (2) Tenant Verification. Owners must obtain evidence that all tenants are farmworkers through the receipt of third party verification. Such verification may include, but is not limited to, a letter from the tenant's employer, or tenant income tax information.
 - (3) Leases. Leases between the owner and the tenant shall be executed when rent is charged to the tenant. Leases shall conform with all federal, state and local laws.
 - (4) Record keeping. The owner of a project shall retain records for each year in the compliance period showing:
 - (A) the total number of residential rental units in the building including the number of bedrooms, and unit size in square feet;
 - (B) the rent charged for each unit;
 - (C) the number of household members in each unit;
 - (D) notation of any vacant units;
 - (E) move-in, move-out dates for all units;
 - (F) how the affordable rents are established and charged.
 - (5) Record Retention. For each year of the compliance period, owners and the Committee are required to retain records of the information described.
 - (A) Owners shall retain documents for at least six years from the due date (with extensions) for filing the and state income tax return beginning with the first qualified year.

- (B) The Committee shall retain records of noncompliance, or failure to certify, for at least six years beyond the Committee's filing of the respective TCAC Form 3521B.
 - (C) Should the Committee request copies of tenant records, it shall retain them for three years from the end of the last calendar year in which it receives them.
 - (1) should the Committee review tenant files at the subject project, it shall retain the review notes and any other pertinent information for the same three-year period.
 - (D) The Committee shall retain all other project documentation for the same three-year period.
- (6) Certification requirements. Under penalty of perjury, a project owner is required to certify annually that the project meets the following certification requirements.
- (A) All terms and conditions recorded in the Regulatory Agreement.
 - (B) No change in ownership has occurred during the reporting period;
 - (C) The project has not been notified by the FTB that it is no longer a "qualified" farmworker housing project
 - (D) The project meets all standards for providing safe, sanitary and decent housing.
- (7) Status report, file and site inspection. The Committee, or its designee, shall routinely inspect and review the project record keeping and site. The annual reviews shall be established by the Committee and shall be at the sole discretion of the Committee. Advance notice shall not be given of the Committee's inspection.
- (A) A Notice of Intent to Conduct Compliance Inspection and a Project Status Report (PSR) form will be delivered to the project owner at the time of the inspection.
 - (B) The project shall be subject to a visual inspection of the project's outward physical appearance. Unit inspections shall not be performed unless deferred maintenance of the exterior project area suggests that units may not be fit for occupancy. Owners shall be notified of the inspection results.
- (8) The Committee shall perform and complete its status report and inspection on Credit projects even if other governmental agencies also monitor those projects. The Committee's reliance on the review findings may alter the extent of the review. In addition, the Committee may rely on reports or site visits prepared by lenders or other governmental agencies, lenders or investors.

Authority: 50199.56 Health and Safety Code
Reference: 50199.52 (a)(2), 50199.53 Health and Safety Code, 17053.14 (h)(2), (I), 23608.2 (h)(2), (I) Revenue and Taxation Code.